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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,415	02/26/2002	Michael J. Puglia	MSE #2645	8582
7590 06/15/2004				
Jerome L. Jeffers, Esq. Bayer Corporation P. O. Box 40 Elkhart, IN 46515-0040				
EXAMINER SIEFKE, SAMUEL P				
ART UNIT		PAPER NUMBER		
1743				

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,415

Applicant(s)

PUGIA ET AL.

Examiner

Samuel P Siefke

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
4a) Of the above claim(s) 19-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date, ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a device for dispensing and analyzing uniform samples of liquids, classified in class 422, subclass 82.01.
- II. Claims 26-37, drawn to multipurpose device for analyzing biological samples, classified in class 436, subclass 180.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the device uses only one reagent for testing a single component in a sample. The subcombination has separate utility such as analyzing multiple components in a sample by use of multiple reagent wells.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Elizabeth Levy on June 8, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Kellogg et al. (USPN 6,063,589).

Kellogg discloses a device for performing microanalytic analyses that comprises a platform that rotates, thereby utilizing centripetal forces that motivates fluid movement through microchannels embedded in the microplatform. The microplatform comprises sample wells for receiving a sample liquid (col. 10, lines 38-42), capillary passageways communicating with the sample well (col. 10, lines 42-48), passageway including a segment defining the volume of uniform liquid sample being disposed between two intersecting passageways vented to the atmosphere (col. 6, lines 7-14), the segment communicating with a transfer capillary passageway for from a first sample well to a first reagent well (col. 13, lines 32-38), a capillary stop disposed within the transfer

passageway for preventing transfer of uniform sample to the first reagent well (col. 11, lines 7-13). Kellogg discloses the capillary passageways have walls that are hydrophilic relative to the sample liquid (col. 10, line 64- col. 11, line 8). The capillary stops can either be hydrophilic (col. 10, lines 64- col. 11, line 8) or hydrophobic (col. 11, line 7-13). A second and third (multiple) reagent well in liquid communication through a capillary passageway with the first reagent well is disclosed (col. 13, lines 32-38; col. 17, lines 5-20). The first reagent well contains a reagent adapted to react with a component contained in the sample and produce a response indicating the amount of component in the liquid sample (col. 14, lines 5-34) along with reducing the interference of the component with a second component to be detected (col. 17, lines 5-20). The first reagent well contains a reagent to pretreat the liquid sample (col. 17, lines 5-20). Electrodes are disposed in the reagent wells for measuring properties of the liquid sample (col. 53, line 66- col. 54 line 29). The capillary channel has a width of about 10 – 500 μm (col. 9, lines 35-41). The capillary passageway has a depth of at least 5 μm (col. 9 ,lines 30-45).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

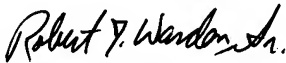
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



June 11, 2004


ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
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